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The Awakening: The Impact of COVID-19, Racial Upheaval, and Political Polarization on Black Women Lawyers

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THE AWAKENING: THE IMPACT OF COVID-19, RACIAL UPHEAVAL, AND POLITICAL POLARIZATION ON BLACK WOMEN LAWYERS

Tsedale M. Melaku*

INTRODUCTION

Concrete barriers have always played a significant role in preventing Black lawyers from reaching the coveted position of partner in law firms. These barriers include an inability to gain initial access of entry into firms, the lack of professional development and training, and being shut out of networking opportunities and sponsorship.[1] Compounded by the pandemic brought on by COVID-19[2] and racial upheaval, Black women lawyers now face even tougher challenges breaking through these barriers.

In addition to existing workplace inequities that Black lawyers have historically faced,[3] the pandemic stripped away previously accessible scaffolds that helped them maintain their firm's work-life balance expectations. Besides taking on the bulk of the "home" work, they are forced to navigate conversations about race and racism resulting from the continuous killings of Black people in America by both police and emboldened white people.[4] The level of invisible labor required of Black women to mitigate the impact of COVID-19, racial upheaval, and political polarization on their work experiences will continue to negatively impact

1. *See generally* TSEDALE M. MELAKU, YOU DON'T LOOK LIKE A LAWYER: BLACK WOMEN AND SYSTEMIC GENDERED RACISM (2019).
2. Aaron Ross Coleman, *Black Bodies Are Still Treated as Expendable*, VOX (June 5, 2020), https://www.vox.com/2020/6/5/21277938/ahmaud-arbery-george-floyd-breonna-taylor-covid [https://perma.cc/C4C5-3HZL].
3. For an in-depth analysis of the structural and cultural barriers Black corporate lawyers face in law firms that prevent their access to advancement, see generally David B. Wilkins & G. Mitu Gulati, *Why Are There So Few Black Lawyers in Corporate Law Firms?: An Institutional Analysis*, 84 CALIF. L. REV. 493 (1996).
4. *Cf.* Tsedale M. Melaku & Angie Beeman, *Academia Isn't a Safe Haven for Conversations About Race and Racism*, HARV. BUS. REV. (June 25, 2020), https://hbr.org/2020/06/academia-isnt-a-safe-haven-for-conversations-about-race [https://perma.cc/26PP-47L7].

their career trajectories, unless firms take calculated measures to support Black women lawyers' emotional, psychological, and social well-being. To contextualize these issues, this Article discusses the various ways that Black women are required to pay an inclusion tax through uncompensated invisible labor and more specifically emotional and cognitive labor[5] during the COVID-19 pandemic, racial upheaval, and political polarization.

I. The Awakening

2020 was a year of awakening, with structural inequities brought to the forefront of national and global discourses. The COVID-19 pandemic magnified the many ways that systemic racism is deeply ingrained in American medical, economic, political, educational, and social institutions in a way that disproportionately and negatively impacts Black and Brown communities. The significant lack of access to medical care for these communities during the pandemic amplified these racial and economic disparities, which has manifested in a devastatingly high death rate within the Black community.[6] This further demonstrates the social conditions that are exacerbated by systemic racism, laying bare the fact that racist policies, practices, and structures continue to reproduce racial inequality. The inconceivable COVID-19 death rate among Black people was further amplified by the entrenched virus of racism, glaringly brought to the global stage by the murders of George Floyd, Breonna Taylor, and Ahmaud Arbery.[7] These atrocities ignited worldwide protests against the continuous killing of Black people while also sparking nationwide conversations about race and racism in American institutions.

The ensuing response from organizations consisted of public statements and affirmations to address racial and social injustice.[8] Moreover, countless legal institutions have been donating resources, taking up pro bono work, building coalitions with community advocates, or severing ties with organizations with problematic practices.[9] These statements and pro bono actions, however well-intentioned, too often prioritize public perception over effectuating actual change in the experiences of Black professionals. Law firms are still fraught with racial and gender inequities reflected in the experiences of Black, Indigenous, and people of color (BIPOC) professionals.[10] Thus, most of these law firms will continue to struggle

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5. Melaku, *supra* note 1, at 17–18.

6*. See* Gregorio A. Millett et al., *Assessing Differential Impacts of COVID-19 on Black Communities*, 47 Annals Epidemiology 37, 40–43 (2020); Whitney N. Laster Pirtle, *Racial Capitalism: A Fundamental Cause of Novel Coronavirus (COVID-19) Pandemic Inequities in the United States*, 47 Health Educ. & Behav. 504, 505–06 (2020); Don Bambino Geno Tai et al., *The Disproportionate Impact of COVID-19 on Racial and Ethnic Minorities in the United States*, 72 Clinical Infectious Diseases 703 (2020).

7*. See* Coleman, *supra* note 2.

8*. See* Melaku & Beeman, *supra* note 4.

9*. See, e.g.*, Caroline Spiezio, *Dorsey & Whitney Ends Alliance with Minneapolis Prosecutors*, Reuters (June 3, 2020), https://www.reuters.com/article/lawyer-protests-dorsey-idUSL1N2DG2NJ [https://perma.cc/C69W-LMCQ].

10*. See generally* Melaku, *supra* note 1.

effecting real and substantive change[11] if their stakeholders are not genuinely invested in making racial equity intrinsic to their organizations' core values.

II. LAW FIRMS AS WHITE INSTITUTIONAL SPACES

As evidenced by research on the experiences of Black lawyers,[12] systemic racism is deeply rooted in law firms because of entrenched racist practices. This culture of exclusion[13] outright disadvantages Black lawyers from gaining access to and reaching the pinnacle of their profession: partnership.[14] The embeddedness of systemic racism is demonstrated further through the concept of the "white racial frame," a dominant white perspective that perpetuates racist narratives, emotions, ideologies, images, stereotypes, and proclivities to discriminate.[15] This frame maintains racial inequality in white spaces by positing whites as superior to nonwhites and cements white privilege and power to the detriment of BIPOC professionals.[16] For instance, the hidden mechanisms of the white racial frame that breed racist discourse, practices, and ideologies become visible when examining the experiences of Black women.[17] Specifically, the absence of Black women in law firms

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11. *See* Meghan Tribe, *Law Firms Call for Social Justice, Despite Own Diversity Issues*, BLOOMBERG L. (June 4, 2020), https://news.bloomberglaw.com/us-law-week/law-firms-call-for-social-justice-despite-own-diversity-issues [https://perma.cc/7YNW-ZELR] [hereinafter Tribe, *Law Firms Call for Social Justice*]; Meghan Tribe, *Virus Crisis Could Be Big Test of Law Firms' Diversity Efforts*, BLOOMBERG L. (Apr. 27, 2020), https://news.bloomberglaw.com/us-law-week/virus-crisis-could-be-big-test-of-law-firms-diversity-efforts [https://perma.cc/YG7A-P78Y].

12. *See generally* DEEPALI BAGATI, CATALYST, WOMEN OF COLOR IN U.S. LAW FIRMS (2009), https://www.catalyst.org/wp-content/uploads/2019/01/Women_of_Color_in_U.S._Law_Firms.pdf [https://perma.cc/DS6T-ZCBM]; JANET E. GANS EPNER, AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., VISIBLE INVISIBILITY: WOMEN OF COLOR IN LAW FIRMS (2006), https://www.americanbar.org/content/dam/aba/administrative/women/visibleinvisibility-execsummary.pdf [https://perma.cc/3HER-3BRM]; MELAKU, *supra* note 1; DESTINY PEERY ET AL., AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO., LEFT BEHIND: THE HURDLES, HASSLES, AND HEARTACHES OF ACHIEVING LONG-TERM LEGAL CAREERS FOR WOMEN OF COLOR (2020), https://www.americanbar.org/content/dam/aba/administrative/women/leftoutleftbehind-int-f-web-061020-003.pdf [https://perma.cc/88JZ-GZ7V]; Wilkins & Gulati, *supra* note 3.

13. *See generally* EDUARDO BONILLA-SILVA, RACISM WITHOUT RACISTS: COLOR-BLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN AMERICA (2014) [hereinafter BONILLA-SILVA, RACISM WITHOUT RACISTS]; EDUARDO BONILLA-SILVA, WHITE SUPREMACY AND RACISM IN THE POST–CIVIL RIGHTS ERA (2001) [hereinafter BONILLA-SILVA, WHITE SUPREMACY]; JOE R. FEAGIN, SYSTEMIC RACISM: A THEORY OF OPPRESSION (2006).

14. *See* BAGATI, *supra* note 12, at 47; MARC BRODHERSON ET AL., MCKINSEY & CO., WOMEN IN LAW FIRMS 3 (2017), https://www.mckinsey.com/~/media/McKinsey/Featured%20Insights/Gender%20Equality/Women%20in%20law%20firms/Women-in-law-firms-final-103017.pdf [https://perma.cc/XR4P-2MS4]; EPNER, *supra* note 12; MELAKU, *supra* note 1, at 9–10; PEERY ET AL., *supra* note 12, at 12; Wilkins & Gulati, *supra* note 3, at 502–04.

15. FEAGIN, *supra* note 13, at 25–27. *See generally* JOE R. FEAGIN, THE WHITE RACIAL FRAME: CENTURIES OF RACIAL FRAMING AND COUNTER-FRAMING (2013).

16. *See* FEAGIN, *supra* note 13, at 274–75.

17. *See generally* WENDY LEO MOORE, REPRODUCING RACISM: WHITE SPACE, ELITE LAW SCHOOLS, AND RACIAL INEQUALITY (2008); Wendy Leo Moore & Joyce M. Bell, *Maneuvers of Whiteness: "Diversity" as a Mechanism of Retrenchment in the Affirmative Action Discourse*, 37 CRITICAL SOCIO. 597 (2011).

illustrates how these firms operate as white institutional spaces that reproduce racial hierarchy through the use of the white racial frame.[18] By controlling access, hoarding resources, and intentionally excluding BIPOC individuals from the institutional means necessary to be successful, law firms reinforce white dominance and therefore operate as a racialized organization.[19]

Law firms maintain and reproduce white male dominance and privilege through hidden barriers, thus perpetuating white supremacy.[20] To date, the majority of firms continue to be predominately white and male.[21] According to the 2019 Vault/MCCA Law Firm Diversity Survey, whites make up 81.69 percent of the overall lawyer demographics, while 89.30 percent of all partners remain white.[22] White men hold approximately 69.00 percent of all partner positions.[23] Moreover, this data supports established findings that women of color face tougher obstacles gaining entry to law firms, professional development, and advancement opportunities, all of which contribute to the highest attrition rates among all groups.[24]

III. IMPACT OF INTERSECTIONAL IDENTITIES

The prominence of race and gender in white institutional spaces cannot be understated, and law firms are no exception.[25] The experiences of women of color, and Black women in particular, are amplified by a system of oppression where race and gender intersect, overlap, and combine to produce simultaneous and often disadvantageous outcomes.[26] An intersectional

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18. *See* MOORE, *supra* note 17.

19. *See id.*; *see also* Victor Ray, *A Theory of Racialized Organizations*, 84 AM. SOCIO. REV. 26, 36–41 (2019).

20. *See generally* BONILLA-SILVA, RACISM WITHOUT RACISTS, *supra* note 13; FEAGIN, *supra* note 13, at 197–207 (describing barriers for Black employees in general); MELAKU, *supra* note 1, at 13–15; Wilkins & Gulati, *supra* note 3, at 554–80.

21. NAT'L ASS'N FOR L. PLACEMENT, 2019 REPORT ON DIVERSITY IN U.S. LAW FIRMS (2019), https://www.nalp.org/uploads/2019_DiversityReport.pdf [https://perma.cc/G62P-V36R]; VAULT & MINORITY CORP. COUNS. ASS'N, 2019 VAULT/MCCA LAW FIRM DIVERSITY SURVEY (2019), https://www.mcca.com/wp-content/uploads/2020/03/2019-Vault_MCCA-Law-Firm-Diversity-Survey-Report.pdf [https://perma.cc/L572-JM6Y]; *see also* MELAKU, *supra* note 1, at 7–10.

22. VAULT & MINORITY CORP. COUNS. ASS'N, *supra* note 21, at 4.

23. NAT'L ASS'N FOR L. PLACEMENT, *supra* note 21, at 3.

24. BAGATI, *supra* note 12, at 31–39; NAT'L ASS'N FOR L. PLACEMENT, *supra* note 21, at 6; VAULT & MINORITY CORP. COUNS. ASS'N, *supra* note 21, at 6–7, 20.

25. MOORE, *supra* note 17.

26. For a comprehensive analysis of intersectionality, see generally PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT (2000); PHILOMENA ESSED, UNDERSTANDING EVERYDAY RACISM: AN INTERDISCIPLINARY APPROACH (1991); Patricia Hill Collins, *It's All in the Family: Intersections of Gender, Race, and Nation*, HYPATIA, Aug. 1998, at 62 [hereinafter Collins, *It's All in the Family*]; Patricia Hill Collins, *Learning from the Outsider Within: The Sociological Significance of Black Feminist Thought*, 33 SOC. PROBS. S14 (1986) [hereinafter Collins, *Learning from the Outsider Within*]; Kimberlé Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991); Denise Segura, *Chicanas and the Triple Oppressions in the Labor Force*, *in* CHICANA VOICES: INTERSECTIONS OF CLASS, RACE, AND GENDER 47 (1990).

approach to examining the experiences of women of color is critical to understanding why they face nuanced challenges.[27] This includes the impact of being one of very few in white spaces, daily racial and gender aggressions, and the silencing of marginalized groups in the workplace.[28] Systemic gendered racism suggests that the white racial frame is also gendered, meaning that race and gender cannot be interrogated separately.[29] The unique experiences that Black women have in the workplace are based on their social location, which is determined by how their identities as women and BIPOC individuals are intricately woven together.[30]

Previous research on women of color indicates that racial and gender stereotyping, compounded by persistent sexism in law firms, creates an outsider status feeling that stifles growth opportunities for women of color.[31] In addition to the feeling of isolation by being one of very few, women of color lawyers also navigate exclusion from access to substantive assignments needed to build their craft and provide positive exposure to high-profile partners and clients, inadequate mentorship and both formal and informal networking opportunities, feelings of tokenism, and limited candid feedback on performance. Findings also reveal that women of color were more likely to indicate intentions to leave their firms.[32] Ineffective diversity measures that do not support equitable workplace culture and practices[33] inevitably exacerbate attrition rates. To better understand these high attrition rates, research centering on the experiences of women of color highlight the importance of investigating the nuanced obstacles women of color face that are particular to their racial and gender identities, such as limited access to mentors, sponsors, proper training, and substantive billable assignments; exclusion from internal and external networking opportunities; work-life balance; ineffective diversity measures; and their overall sense of value and inclusion.[34]

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27. *See generally* COLLINS, *supra* note 26; ESSED, *supra* note 26; Collins, *It's All in the Family*, *supra* note 26; Collins, *Learning from the Outsider Within*, *supra* note 26; Crenshaw, *supra* note 26; Segura, *supra* note 26.

28. *See generally* PRESUMED INCOMPETENT: THE INTERSECTIONS OF RACE AND CLASS FOR WOMEN IN ACADEMIA (Gabriella Gutiérrez y Muhs et al. eds., 2012) (providing qualitative research on women of color encountering these challenges as faculty in higher education); MELAKU, *supra* note 1, at 19–34.

29. ADIA HARVEY WINGFIELD, DOING BUSINESS WITH BEAUTY: BLACK WOMEN, HAIR SALONS, AND THE RACIAL ENCLAVE ECONOMY 6–11 (2008).

30. *Id.* at 6–7.

31. BAGATI, *supra* note 12, at 16–21; BRODHERSON ET AL., *supra* note 14, at 7–9 (finding that women in general believe their gender will impact their opportunity to advance in their careers); EPNER, *supra* note 12; MELAKU, *supra* note 1, at 35–48; *see also* PEERY ET AL., *supra* note 12, at viii–x (summarizing this research).

32. BAGATI, *supra* note 12, at 37–39.

33. *Id.* at 10–11.

34. *Id.* at 25–46 (discussing each of these barriers); BRODHERSON ET AL., *supra* note 14, at 4–9 (discussing barriers that apply to all women lawyers); EPNER, *supra* note 12; MELAKU, *supra* note 1, at 9.

A. Black Women Lawyers' Experiences

Consistent with previous research, newer studies focusing on the nuanced experiences of women of color continue to emphasize the structural impediments they face due to persistent implicit and explicit bias, as well as various stereotypes associated with being a member of a marginalized group.[35] Women of color, and Black women specifically, are forced to perform invisible labor to mitigate the negative perceptions of colleagues and superiors while navigating white institutional spaces.[36]

In *You Don't Look Like a Lawyer: Black Women and Systemic Gendered Racism*, I examine the experiences of Black women lawyers to uncover the varied reasons they remain incredibly underrepresented in associate and partnership positions.[37] In the book, I assert that the double bind of race and gender create daily aggressions that manifest in law firms through embedded racist and discriminatory practices.[38] These practices span a broad spectrum, and the hidden mechanisms that perpetuate inequality are particularly pronounced during the recruitment process. Although firms argue that objective criteria are used to gauge "fit,"[39] potential Black candidates are often disadvantaged because of the subjective criteria of the interviewer. Coded language within recruitment practices strategically excludes marginalized group members, without outwardly appearing racist or discriminatory.[40] The white racial frame, assessing who "fits" in white spaces without disrupting it, is built into the hiring process and creates structural barriers that prohibit Black candidates from successfully navigating recruitment. This in turn leads to the low numbers of Black associates, who then struggle to navigate paths to partnership once recruited—inevitably creating high attrition rates while subsequently diminishing the pool of potential Black partners.[41]

B. The Invisible Labor Clause

Upon successfully navigating the fraught recruitment process, Black women are met with concrete barriers to professional development, inclusivity, and advancement that eventually lead to their high attrition rates. My previous work, through in-depth, semistructured interviews with over twenty Black women in elite corporate law firms and a qualitative analysis

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35. *See generally* AM. BAR ASS'N COMM'N ON WOMEN IN THE PRO. & MINORITY CORP. COUNS. ASS'N, YOU CAN'T CHANGE WHAT YOU CAN'T SEE: INTERRUPTING RACIAL & GENDER BIAS IN THE LEGAL PROFESSION (2018), https://www.mcca.com/wp-content/uploads/2018/09/You-Cant-Change-What-You-Cant-See-Executive-Summary.pdf [https://perma.cc/88NV-8PCM]; MELAKU, *supra* note 1; PEERY ET AL., *supra* note 12, at 10.

36. MELAKU, *supra* note 1, at 31–34; MOORE, *supra* note 17, at 162–63.

37. *See generally* MELAKU, *supra* note 1.

38. *Id.* at 10; *see also* YANICK ST. JEAN & JOE R. FEAGIN, DOUBLE BURDEN: BLACK WOMEN AND EVERYDAY RACISM 40–72 (1998) (discussing how the "double burden" of race and gender impacts Black women in the workplace).

39. MELAKU, *supra* note 1, at 26; Wilkins & Gulati, *supra* note 3, at 547–58.

40. BONILLA-SILVA, RACISM WITHOUT RACISTS, *supra* note 13, at 74–99.

41. MELAKU, *supra* note 1, at 22; Wilkins & Gulati, *supra* note 3, at 534–42.

of how systemic gendered racism and color-blind racism are part of the structural organization of law firms, exemplifies the practical application of two theoretical concepts: the "invisible labor clause" and the "inclusion tax."[42]

Compared to their white counterparts, Black women are forced to exert significant hours performing "invisible work" that is neither compensated nor recognized, constantly pushing them to negotiate their presence in white institutional spaces.[43] This invisible labor clause speaks directly to the ways in which Black women, and other marginalized group members, are required to perform added invisible work to navigate their daily presence in both professional and social spaces.[44] For Black women in law firms, the invisible labor clause is an unwritten clause in their employment contract obligating them to do unrecognized and uncompensated work to maintain their jobs. Black women become cognizant of the invisible labor clause through repeated exposure to the necessary labor expended to navigate white spaces. The experiences of BIPOC individuals in law firms, navigating through white racial frames and entrenched systemic racism, suggests that Black women lawyers are further burdened by the cognitive and emotional work necessary to resist daily racial and gender aggressions.[45]

C. The Inclusion Tax

The inclusion tax is the manifestation of the invisible labor exerted by Black women to navigate firm culture and organizational practices that reproduce racial and gender inequities. Labor is levied in the form of an organizational inclusion tax that is imposed on Black women to not only be included in white spaces but to also resist and/or adhere to white norms. The tax manifests in the added resources "spent" by Black women comprised of the emotional, cognitive, financial, and relational labor expended to navigate and negotiate their daily existence in white spaces.[46] Interviews with Black women revealed that the tax levied against them negatively impacts their career trajectories.[47] As a result of being one of very few Black lawyers—if

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42. MELAKU, *supra* note 1, at 16–18.

43. *Id.*; *see also* MOORE, *supra* note 17, at 54; Louwanda Evans & Wendy L. Moore, *Impossible Burdens: White Institutions, Emotional Labor, and Micro-resistance*, 62 SOC. PROBS. 439, 446–49 (2015).

44. MELAKU, *supra* note 1, at 16–18.

45. BAGATI, *supra* note 12, at 18–21; EPNER, *supra* note 12; MELAKU, *supra* note 1, at 17–18; PEERY ET AL., *supra* note 12, at 4–10; Wilkins & Gulati, *supra* note 3.

46. In a forthcoming article, "The Inclusion Tax: The Price of the Ticket in White Spaces," the author further theorizes on the "inclusion tax," a theoretical concept derived from examining the pervasive impact of systemic racism on U.S. institutions. *See generally* Tsedale M. Melaku, The Inclusion Tax: The Price of the Ticket in White Spaces (2021) (unpublished manuscript) (on file with author). The article expands on Arlie Russell Hochschild's concept of the "emotional labor" required of workers to manage emotion in a way serviceable to their respective industries, arguing that the inclusion tax inserts a litany of "invisible labors," including emotional, cognitive, financial, and relational, into the career trajectories of professional people of color. *See generally* ARLIE RUSSELL HOCHSCHILD, THE MANAGED HEART: COMMERCIALIZATION OF HUMAN FEELING (1983).

47. *See* MELAKU, *supra* note 1, at 26–28.

not the only in their firms—the study participants acknowledged that they utilized significant amounts of emotional and cognitive energy worrying about additional burdens. These burdens include concern about being perceived as a diversity hire; navigating presumptions about their competence, appearance, and visibility; developing key mentor and sponsor relationships; facing anxiety about their performance, recognition, and self-doubt; and various other issues. The level of invisible labor exerted is also demonstrated through the actual time spent agonizing over these pervasive issues that lead to stress and challenge their psychological, emotional, and physical well-being.[48] Unlike their white counterparts, Black women constantly have to negotiate how race and gender, as well as other marginalizing identities, negatively impact other people's perceptions of them—a process that can translate into discriminatory practices that lead to Black women's diminished potential for success.[49]

IV. THE IMPACT OF THE AWAKENING ON BLACK WOMEN LAWYERS

The current COVID-19 pandemic, as well as social and political stressors, exacerbate conditions that have already challenged Black women lawyers' emotional and psychological well-being, such as working in predominately white spaces, lack of access to mentorship and sponsorship relationships, limited networking and professional development opportunities, persistent presumptions about competence, hypervisibility and invisibility, and various other pervasive issues. This Article therefore aims to answer the question of how Black women lawyers' identities have impacted their career trajectories during the COVID-19 pandemic, a time of racial upheaval and a polarizing and contentious election season.

Using a critical race approach and centering on intersectional analysis, I draw from the preliminary findings of an online survey with Black women lawyers to better understand the various added types of invisible labor these women are required to perform, as well as the resulting inclusion tax paid during this time. I theorize how law firms operate as racialized social structures[50] that perpetuate systemic racist practices that manifest in daily racial and gender aggressions creating concrete barriers that Black women are forced to confront in the workplace.[51]

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48. *Id.* at 24; Paulette M. Caldwell, *A Hair Piece: Perspectives on the Intersection of Race and Gender*, 1991 DUKE L.J. 365, 383.

49. *See generally* SISTER CIRCLE: BLACK WOMEN AND WORK (Sharon Harley & The Black Women & Work Collective eds., 2002); MELAKU, *supra* note 1; ADIA HARVEY WINGFIELD, FLATLINING: RACE, WORK, AND HEALTH CARE IN THE NEW ECONOMY (2019); Adia Harvey Wingfield & Koji Chavez, *Getting in, Getting Hired, Getting Sideways Looks: Organizational Hierarchy and Perceptions of Racial Discrimination*, 85 AM. SOCIO. REV. 31 (2020).

50. BONILLA-SILVA, RACISM WITHOUT RACISTS, *supra* note 13, at 15; Eduardo Bonilla-Silva, *Rethinking Racism: Toward a Structural Interpretation*, 62 AM. SOCIO. REV. 465, 469 (1997).

51. *See generally* MELAKU, *supra* note 1.

A. The Impact of COVID-19

1. Shifting Paradigms: Negotiating Working Remotely

COVID-19 has changed the meaning of what Arlie Hochschild and Anne Machung have called the "second shift," highlighting the various ways that "home" work has been recentered as women's work.[52] Distance learning with children and working remotely have converged three distinct spaces of daily life for families across America: home, work, and school. Women have contended with the fact that they must simultaneously cope with being a mother, teacher, chef, cleaner, caretaker, and employee to maintain their social and professional lives. This shift in routine has forced many of us to bear witness to gender roles that have been historically and socially programed for women and men. Without the often costly yet necessary external support, including childcare, housekeeping, and school services, many women have fallen into the default mode of primary caretaker.[53]

Hochschild and Machung's conceptualization of the second shift as the unpaid work women perform in the home, on top of the paid labor in the workplace, is amplified by the shifting paradigm of remote work caused by the COVID-19 pandemic.[54] New research suggests that women across industries struggle with the added responsibilities of maintaining their homes and work simultaneously, creating significant challenges impacting their personal and professional lives.[55] In particular, childcare responsibilities and online working conditions have intensified exhaustion and concentration among women, affecting their emotional and mental well-being. This added "invisible" work will no doubt lead to high attrition rates among women, who have historically faced barriers accessing opportunity and advancement in the workplace.

2. "She-Fault" Parent

COVID-19 has reverted women into the "she-fault" parent mode, where they are disproportionately burdened with handling the homeschooling and childcare responsibilities.[56] Respondents to my online survey have indicated that as a result of the pandemic and the safety measures in place, respondents

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52. *See generally* ARLIE RUSSELL HOCHSCHILD & ANNE MACHUNG, THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME (1989).

53. *See generally* Jonathan Gershuny et al., *Exit, Voice, and Suffering: Do Couples Adapt to Changing Employment Patterns?*, 67 J. MARRIAGE & FAM. 656 (2005).

54. Tital Alon et al., *The Impact of COVID-19 on Gender Equality* 62–85 (Nat'l Bureau of Econ. Rsch., Working Paper No. 26947, 2020), https://www.nber.org/system/files/working_papers/w26947/w26947.pdf [https://perma.cc/BER6-7UBZ].

55. *Id.*

56. Kate Henley Averett, *Moms Are the 'She-Fault' Parent During This Pandemic*, SCARY MOMMY (Mar. 27, 2020), https://www.scarymommy.com/coronavirus-homeschooling-disproportionate-burden-women [https://perma.cc/63TT-YQFS]; Jessica Bennett, *"I Feel Like I Have Five Jobs": Moms Navigate the Pandemic*, N.Y. TIMES (Mar. 20, 2020), https://www.nytimes.com/2020/03/20/parenting/childcare-coronavirus-moms.html [https://perma.cc/HSF8-2YNB].

have moved to working remotely and taking on managing their households while doing their jobs. This shift has required them to negotiate how they interact within the home, as well as in their virtual workspaces. In particular, their dealing with the struggles of parenting while working has been pronounced.

These changes have led to various setbacks as articulated by both Lydia, senior counsel, and Amara, a public defender. Lydia shares that "childcare, inability to fully concentrate on anything while juggling working, parenting and living everyday life" have been very difficult during this time.[57] She is echoed by Amara, who acknowledges that the "biggest challenge for me has been access, or lack thereof, to childcare. With an infant child, having the proper environment and the needed concentration to do my job has been very difficult."[58] Amara also points to the ways in which her ability to gauge her performance has shifted as a result of remote working, noting that "not having my colleagues, support staff and supervisors within reach to get feedback, guidance or request assistance has made remote work particularly isolating and burdensome."[59]

3. More of the Same: Intersections of Race and Gender

Although some issues that have arisen during the pandemic are unique to this moment, including many people having to work remotely, others are issues that have historically been challenging for women of color in the workplace. Women of color have always had to contend with not having adequate support, difficulty being included in organizational culture, managing the perceptions of others, developing collegial relationships that can manifest into mentorship and sponsorship, and gaining access to professional development and advancement opportunities.[60] These challenges are exacerbated by present social, economic, and political crises leading to significant invisible labor that Black women are forced to manage. Amara poignantly notes that there has been consistency in the less positive ways in which she has interacted with her direct reports. She disclosed that "[m]y supervisors have not been very helpful at all, nor has management for the most part. But that's really not that different from pre-COVID times."[61]

Participants of the study share sentiments that COVID-19 has intensified what they have experienced previously in the workplace. Recent data notes that women of color are disproportionately impacted by COVID-19, shining a glaring light on the entrenched nature of systemic racism in American social, economic, and medical institutions.[62] Employment in essential jobs, limited health care access, food insecurity, housing inequities, and loss of economic viability widens the racial and gender inequities powered by

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57. Responses from Online Survey of Black Women Lawyers (2020) (on file with author).
58. *Id.*
59. *Id.*
60. *See supra* note 34 and accompanying text.
61. Responses from Online Survey of Black Women Lawyers, *supra* note 57.
62. *See supra* note 6.

systemic racism that disproportionately affect women of color. The Black women who responded to my survey confirm that this moment has brought on more of the same. Niki, a fourth-year associate, says the downside of working remotely is

> that the relationships with colleagues and partners that were not strong to begin with pre-COVID have only deteriorated. I am facing the problems I faced pre-COVID: concerns about my career; where it's going; exactly what I need to do to get where I believe I want to be; how to best situate myself; am I in the best place? With whom do I need to truly connect? How can I find them?[63]

The concerns that Niki articulates are also consistent with the many concerns of Black women lawyers who participated in my original study examining the experiences of Black women in law firms.[64]

The invisible labor exerted by Black women has become even more pronounced during the COVID-19 pandemic. Trying to negotiate remote workplace dynamics in an effort to maintain professionalism and collegial interactions have created added emotional and cognitive labor for many Black professionals. In particular, these added labors, which manifest in the form of the inclusion tax, result from implicit biases and stereotypes about Black women. Dorothy, a chief of staff, shares that in taking on her new position during the pandemic, she was faced with making decisions about how to interact with her colleagues to mitigate negative perceptions, saying:

> I transitioned into a new position in [April] 2020 amidst all of this. So, I believe my position has been impacted because I have not been able to build a rapport with my co-workers, supervisor, colleagues, or supervisees in the manner I would generally. Thus, as a Black woman I believe I am behind the mark since this type of social collateral can be beneficial. Also, I am aware that Black women especially in management roles are not well received by all (no matter their race [and] gender) so I find myself spending more time replying to and drafting emails to ensure my tone is conveyed in a way that is not too aggressive, have conversations with people and battling whether [I] should have them virtually and show my face or keep it to phone to avoid people knowing that I am Black.[65]

Dorothy articulates what many Black women have acknowledged in their experiences working in white institutional spaces—the need to expend significant emotional and cognitive labor managing how colleagues interpret their behavior, including actions and words.[66]

Being one of very few Black people in the workplace, whether in person or remote work, impacts how one interacts with colleagues from majority groups. For example, Dorothy's time spent ensuring that her tone is checked in emails to prevent others from perceiving her as "aggressive," a common stereotype attributed to Black women, is a manifestation of the inclusion tax

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63. Responses from Online Survey of Black Women Lawyers, *supra* note 57.
64. *See* MELAKU, *supra* note 1, at 93–111.
65. Responses from Online Survey of Black Women Lawyers, *supra* note 57.
66. *See* MELAKU, *supra* note 1, at 35–48.

at work. Black professionals often engage in code-switching[67] and other tactics to ensure their own psychological safety[68] while navigating white spaces. Despite being in remote working conditions, Black women are still faced with the task of making others comfortable with their differences,[69] and in the case of Dorothy, not sharing her full identity with her colleagues creates a buffer from having to manage implicit biases and stereotypes attributed to Black women.

4. The Stress of It All: Emotional and Psychological Impact

As described in the experiences of Dorothy, working remotely during the COVID-19 pandemic produces specific challenges that require significant invisible labor, often challenging the emotional and psychological well-being of Black women lawyers. Preliminary findings of my online survey suggest that Black women feel unmotivated, have a sense of diminished concentration, feel the pressure to manage everything, have anxiety about keeping up appearances, and feel the burden of their invisible labor. When participants were asked about the specific challenges they are facing, Amara, a public defender, admits that she is concerned about her "general lack of motivation."[70] She continues, saying that she "was somewhat in a 'groove' so to speak and now it feels like [she's] just getting by every day. It's a frustrating feeling."[71] Lydia, senior counsel, relates sharing that she's "definitely not feeling motivated to craft a 'career' out of work."[72]

In discussing the challenges faced during the pandemic, participants articulated the various types of invisible labor they find themselves doing. Amara reflects on her invisible labor and how she feels pressure to perform, stating: "I definitely feel like I'm doing way more work than before. I'm the lawyer, paralegal, supervisor, investigator, mailroom clerk, day care provider, teacher, and everything else I've always done as a wife and mother but seemingly more."[73] Meanwhile, Lydia confesses that "keeping up appearances of being happy and in control of work and childcare" is invisible labor that creates stress on top of "struggling to care about work with the same level of singular attention, when there are much greater issues at stake in the country."[74] Lydia captures the notion that women are "having to

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67. MELAKU, *supra* note 1, at 68–70; Courtney L. McCluney et al., *The Costs of Code-Switching*, HARV. BUS. REV. (Nov. 15, 2019), https://hbr.org/2019/11/the-costs-of-codeswitching [https://perma.cc/PW98-Y3Q3] (defining code-switching as "adjusting one's style of speech, appearance, behavior, and expression in ways that will optimize the comfort of others in exchange for fair treatment, quality service, and employment opportunities").

68. *See generally* TIMOTHY R. CLARK, THE 4 STAGES OF PSYCHOLOGICAL SAFETY: DEFINING THE PATH TO INCLUSION AND INNOVATION (2020); William A. Kahn, *Psychological Conditions of Personal Engagement and Disengagement at Work*, 33 ACAD. MGMT. J. 692 (1990).

69. MELAKU, *supra* note 1, at 35.

70. Responses from Online Survey of Black Women Lawyers, *supra* note 57.

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.*

manage everything on [their] own," highlighting that all her colleagues "have a spouse and most have older children in the house."[75]

Lydia's experience demonstrates that women in varying stages of career and personal life have unique experiences based on their particular circumstances. For example, Yolanda, an attorney, describes invisible labor as the balancing act between her personal and professional life. She notes that

> [m]any of the people in my workplace have kids and families and they tend to connect in that way. I do not have any kids and I find myself having to feign interest as people go on and on about their kids at work. Not only do I not know them personally (I care about my friends' kids and stories they share), but I don't relate to their stories since I am not a parent.[76]

Yolanda goes on to advocate for inclusion in how people interact, saying, "I wish there were other ways to relate and interact with people that was more inclusive."[77]

The COVID-19 pandemic has created additional barriers for women navigating workplaces. The shifting paradigm of remote work, distance learning, becoming the "she-fault" parent in many cases, mitigating race and gender dynamics, coping with the stress of managing significant invisible labor, and being disproportionately burdened with "home" work aggravates the historical challenges Black women continue to face navigating white workplaces.

B. The Impact of Racial Upheaval

1. Efficacy of Statements and Commitments to Racial and Social Justice

Being Black in America is a dangerous condition that has been amplified by the devastating loss of life resulting from COVID-19 ravaging Black communities.[78] However, in this moment of extreme caution, where government-imposed lockdowns and quarantine measures have been instituted to ensure public safety,[79] Black people continue to remain in danger. The continuous killing of Black individuals by police and emboldened whites has magnified the various ways that Black people are fighting simultaneous pandemics during this time: COVID-19 and racism.[80]

The organizational responses in the wake of racial upheaval, from statements of support to commitments to root out systemic racism, have

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75. *Id.*

76. *Id.*

77. *Id.*

78. Millett et al., *supra* note 6, at 40; Pirtle, *supra* note 6, at 505.

79. Jacob Gershman, *A Guide to State Coronavirus Reopenings and Lockdowns*, WALL ST. J. (May 20, 2020), https://www.wsj.com/articles/a-state-by-state-guide-to-coronavirus-lockdowns-11584749351 [https://perma.cc/F4R3-AQSP].

80. Tsedale M. Melaku, *Amy Cooper, White Privilege and the Murder of Black People*, FAIR OBSERVER (June 2, 2020), https://www.fairobserver.com/region/north_america/tsedale-melaku-amy-cooper-white-privilege-abstract-liberalism-george-floyd-death-protests-us-news-15161 [https://perma.cc/7L3W-UW4T].

spotlighted Black employees, the need to center discussions about race and racism, and the impact racial upheaval has on BIPOC individuals.[81] In so doing, these statements of racial equity are called into question, as those commitments do not fully translate to or reflect the experiences of Black people within organizations.[82] Although there have been incremental changes reflecting diversity, equity, and inclusion (DEI) projects, several indicia—such as the low numbers of Black employees, high attrition rates, and qualitative data—suggest that organizations have a long way to go before they can truly celebrate racial and gender equity benchmarks that yield substantive progress reflected in the experiences of Black professionals.[83]

2. Black at Work

Black lawyers in white institutional spaces navigate a myriad of obstacles attempting to successfully negotiate access to resources and opportunity for advancement. Research indicates that they often traverse terrain that is riddled with subtle practices that perpetuate racial inequities.[84] Prominent race scholar Eduardo Bonilla-Silva theorizes that color-blind racism replaces historically overt racism with a "new racism," one that is subtle, pernicious, and pervasive in penetrating American social and institutional structures.[85] While appearing liberal and egalitarian, white institutional spaces embed subtle, hidden mechanisms to maintain white privilege and power through the use of color-blind racist ideology that upholds and reinforces racist practices, perpetually disadvantaging nonwhites.[86] The subtlety of daily racial and gender aggressions does not diminish the negative cumulative effect on the experiences of Black professionals in white spaces. It also requires that they perform added invisible labor navigating white spaces and pay an inclusion tax while resisting and/or adhering to white norms.[87]

Stemming from the public display of Black death and national reactions to the impact of systemic racism in this time of racial upheaval, Black professionals across industries have been called on to engage in discussions about race, racism, and the experiences of being Black in America. They are also being tapped to participate in organizational efforts to address DEI. For instance, initial responses to my online survey suggest that Black women lawyers are presently doing the heavy lifting and are faced with: (1) managing emotions, (2) becoming visible for reliving trauma, (3) being overburdened with the firm's DEI work, and (4) the overall sentiment that change is hard to achieve. This additional work and labor, on top of the everyday responsibilities of their job titles, working through a pandemic with

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81. *See* Tribe, *Law Firms Call for Social Justice*, *supra* note 11.

82. Melaku & Beeman, *supra* note 4.

83. *See generally* BAGATI, *supra* note 12; BRODHERSON ET AL., *supra* note 14; EPNER, *supra* note 12; MELAKU, *supra* note 1; PEERY ET AL., *supra* note 12; Wilkins & Gulati, *supra* note 3, at 611–12.

84. *See supra* Part II.

85. *See* BONILLA-SILVA, RACISM WITHOUT RACISTS, *supra* note 13, at 23–29.

86. *Id.* at 77–95.

87. MELAKU, *supra* note 1, at 16–18; *see also supra* Parts III.B–C.

its own challenges, and the lack of commitment to the value of this extra work, has created increased obstacles for Black women lawyers.

a. Managing Emotions

In the wake of social unrest, participants reflected on how they were dealing with managing emotions in the workplace—both their own emotions and those of their coworkers. The added pressure and stress for Black professionals is compounded by having to simultaneously confront the reality of racism strewn across national discourses and mitigate the reactions of others in the workplace. For example, Amara notes how she felt upon learning about the murder of George Floyd. She says,

> I remember George Floyd dying the day before my son turned 13 and it really affected me. I felt devastated, angry, afraid, hopeless, etc. In those days, I really resented my white colleagues who just seemed to go about their business, even after I'd hinted at the impact these events were having on me. It felt very polarizing.[88]

Amara captures here what many Black people across the nation experienced immediately after the killing of George Floyd and how they had to expend added emotional and cognitive labor negotiating how to respond to white colleagues' indifference to yet another killing of an unarmed Black person. The lack of empathy Amara perceived from her colleagues stifles the development of trusting relationships that build collegiality in the workplace.

b. Becoming Visible for Reliving Traumas

While Amara managed the silencing of her experiences in this moment, Niki, a fourth-year associate, was called on to talk about her experiences with racial discrimination and violence. However, Niki's response speaks directly to the impact of Black professionals being the focus for public consumption and learning. She admits declining to participate in discussions where she would be compelled to tell her story, saying, "I refused because I didn't feel comfortable sharing. I am a private person and would only feel comfortable sharing with a group I knew well because sharing racist experiences means reliving trauma and I do not relive traumas with people who are not all my relatives or friends."[89]

The forums, spaces, and platforms created by organizations for BIPOC individuals to divulge their traumas with daily racial and gender aggressions hardly take into account the level of emotional and cognitive labor that goes into unearthing painful ordeals. These events are in response to the moment and serve a particular need. They are performative in nature: firms need to signal solidarity by showcasing their Black employees in a public venue. The visibility of Black professionals is heightened in this moment, where they are often made hyper-visible when public racial discourse abounds. This

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88. Responses from Online Survey of Black Women Lawyers, *supra* note 57.
89. *Id.*

highlights the racialized society in which we live and the racialized organizations we work for[90]—where Black people are called on to make others comfortable with the traumas and aggressions they face daily. Although it is important to listen to the narrative experiences of marginalized groups, organizations must consider the cost imposed on these groups. The tax levied against Black professionals for change that seems stagnant is too steep.

c. Overburdened with DEI Work

In addition to being asked to share personal experiences, Black professionals are also being tapped to undertake DEI work on top of their regular work responsibilities. When participants are asked whether they have been recognized or compensated for doing DEI work, the responses suggest that they have not. Lydia, senior counsel, confirms that she has not been recognized or compensated for doing racial equity work and in fact believes that she is at a disadvantage for doing this work. She says, "[i]f anything, I fear that my subtle disengagement with the actual work responsibilities will mean I get recognized negatively for not being as committed or engaged with work. Whether that means demotion or a lower bonus, remains to be seen."[91]

In a moment like this, as a Black lawyer, being pulled in to do DEI work adds additional invisible labor that often does not translate into positive outcomes when considering work goals, professional development, and advancement opportunities. Without truly making DEI work intrinsic to the organizational structure, such as by including performance metrics that value these contributions as substantive and essential to the firm, the added labor of DEI work disadvantages the career trajectory of Black women lawyers.

d. It Is Difficult to Be Optimistic About Change

An important observation from the preliminary responses to my online survey suggests that Black women lawyers are not optimistic about their organizations changing their practices to disrupt existing structures that inherently disadvantage Black professionals. When asked how this time of racial awakening has impacted their perceptions of their organizations and their commitments to racial equity, many confirmed that they had doubts about actual change. Dorothy, a chief of staff, shares her thoughts: "I do not prescribe to the notion that this is a moment in time where non Black people's perceptions are truly changing. Thus, in spite of many more people speaking about racism few are willing to own—in professional settings—their part in much or offer many solutions."[92] Dorothy engages a critical point when suggesting that the anti-racist work developing outside of the workplace is contradictory to organizations' own embedded racist practices, which the organizations do not reflect on. The disconnect between the work individuals

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90. Ray, *supra* note 19, at 26–29.
91. Responses from Online Survey of Black Women Lawyers, *supra* note 57.
92. *Id.*

are doing outside of organizations needs to be bridged with any targeted efforts necessary to address systemic racism from within.

Interestingly, Lydia articulates how many of her colleagues are now versed in issues that impact Black communities. Organizations across industries have invested in learning about key moments in history that set the tone for the continuous negative treatment of Black people in America. Lydia shares that

> [a]t the margins, colleagues now know the phrase 'Black Lives Matter,' and some of my immediate colleagues have confided in me that they had not been aware of the experience of black people during their lifetimes (post-Civil Rights). But it hasn't really changed the workplace, the initiatives and efforts feel so hapless and directionless. In some ways it's worse that they now know to be concerned, but they have no rigorous, articulated plan to channel their concern.[93]

As Lydia expresses, even with this knowledge and an evolving language, necessary plans to dismantle oppressive structures within organizations are still absent. Consequently, words will continue to ring hollow in the face of facts and without a true commitment and actions to uproot the complicity in systemic racist firm practices.

C. The Impact of Being Political at Work

1. Politics in the Workplace Is Risky Business

Being political in the workplace has always been tricky but given the intense political polarization we are experiencing in the United States, it has become even trickier.[94] Political views are often personal and elicit strong emotions that can become difficult to manage in the workplace. Individuals take great risk when discussing politics because of the capacity to offend and alienate colleagues, which can damage working relationships.[95] There is a real sense in law firms and other organizations that publicly supporting Black Lives Matter[96] (BLM) or other projects that may be perceived as controversial is not encouraged. The need to maintain a very neutral perspective is pervasive in organizations, where political views are often discouraged to ensure that potential conflicts do not arise. These restrictions prohibit marginalized group members from sharing information about themselves, particularly their interests, values, and passions.[97] Unlike majority colleagues, they are unable to bring their whole and authentic selves

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93. *Id.*

94. David Maxfield et al., *How to Talk Politics at Work Without Alienating People*, Harv. Bus. Rev. (Sept. 14, 2016), https://hbr.org/2016/09/how-to-talk-politics-at-work-without-alienating-people [https://perma.cc/XYE9-EHPH].

95. Rebecca Knight, *Should You Talk About Politics at Work?*, Harv. Bus. Rev. (Sept. 16, 2016), https://hbr.org/2016/09/should-you-talk-about-politics-at-work [https://perma.cc/58NJ-C3LB].

96. *See infra* Part IV.C.3.

97. *See generally* Katherine W. Phillips et al., *Diversity and Authenticity*, Harv. Bus. Rev., Mar.–Apr. 2018, at 132.

to work, which creates added invisible labor and stress maneuvering organizations.

As a result, Black professionals, and BIPOC professionals in general, may often be advised that being political can be problematic in the workplace. This is exacerbated by the fact that Black lawyers are often one of very few in organizations. Being one of very few Black people in white institutional spaces impacts one's ability to gain access to training, professional development, mentor and sponsorship relationships, networking opportunities, and also political movement, all of which can significantly hinder one's ability to advance. Various studies find that being an outsider in white institutional spaces comes with very real emotional, mental, and physical labor required to manage other people's perceptions,[98] particularly when the white racial frame devalues one's life experiences, attributes, and perspectives.[99] Black professionals often have to adjust to the expectation of making others comfortable with their differences and presence.[100] Yolanda, a government attorney, shares that she "rarely speak[s] about politics in the workplace," and if she does, "it is usually with another Black attorney or someone who [she] know[s] shares similar views."[101] Amara expresses similar sentiments, noting that although some of her coworkers appear to be like-minded, she has "learned not to discuss politics with co-workers because it can go terribly wrong."[102]

2. Too Black at Work

Research on the experiences of Black professionals acknowledges that, for them, being "too Black" in the workplace can lead to negative perceptions and outcomes.[103] Perceptions play a significant role in how Black professionals are treated, particularly in white institutional spaces that adhere to white normative standards that exclude many BIPOC individuals. For example, the discourse surrounding Black hair in the workplace touches on this notion of being "too Black" in the workplace.[104] Wearing natural hairstyles like braids, locks, or big curly hair, for instance, can be seen as being "too Black." Other examples range from the varying forms of fashion to the entertainment people enjoy, from music to movies and TV shows.

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98. MELAKU, *supra* note 1, at 35–48; MOORE, *supra* note 17, at 162–63.
99. FEAGIN, *supra* note 15; MELAKU, *supra* note 1, at 35.
100. MELAKU, *supra* note 1, at 41.
101. Responses from Online Survey of Black Women Lawyers, *supra* note 57.
102. *Id.*
103. Adia Harvey Wingfield, *Being Black—but Not Too Black—in the Workplace*, ATLANTIC (Oct. 14, 2015), https://www.theatlantic.com/business/archive/2015/10/being-black-work/409990/ [https://perma.cc/8CDE-JEJY].
104. *See* Susan L. Bryant, *The Beauty Ideal: The Effects of European Standards of Beauty on Black Women*, 6 COLUM. SOC. WORK REV. 80, 80–81 (2013); Caldwell, *supra* note 48, at 383; Cheryl Thompson, *Black Women, Beauty, and Hair as a Matter of Being*, 38 WOMEN'S STUD. 831, 853–55 (2009).

Managing emotions and perceptions is an underlying theme in the experiences of Black professionals.[105] The labor associated with managing emotions so as to not appear "too Black" according to other's perceptions is immense. For example, Black professionals take great caution to avoid responding to issues with anger or frustration, to always maintain composure, and to be pleasant and congenial to avoid stereotypes. They engage in careful impression management[106] to deter others from perceiving them as "the angry Black person." Legal scholars Devon Carbado and Mitu Gulati argue this very point, noting that marginalized group members, like all employees, must develop and project a work identity that is suitable for the workplace.[107] However, for BIPOC professionals, performing this identity work is incredibly taxing:

> [B]ecause members of these groups are often likely to perceive themselves as subject to negative stereotypes, they are also likely to feel the need to do significant amounts of "extra" identity work to counter those stereotypes. Depending on the context, that extra work may not only result in significant opportunity costs, but also entail a high level of risk.[108]

This is reminiscent of Dorothy's experiences in this moment, where she finds herself "spending more time replying to and drafting emails to ensure [her] tone is conveyed in a way that is not too aggressive."[109] Again, the emphasis on the invisible labor expended mitigating the effects of other people's negative perceptions of Black professionals cannot be understated. They are continuously met with having to pay an inclusion tax in white spaces for engaging in impression management at the highest level.[110]

3. Black Lives Matter

Publicly aligning oneself with BLM, a broad-based social movement that works toward campaigning against systemic racism, is both political and personal for many Black professionals. The BLM movement works through activism, education, advocacy, and consciousness raising to publicize the vast challenges Black people encounter. BLM brings awareness to how anti–Black racism impacts the lives of Black people, specifically to the attention of politicians in the hopes of fighting police brutality, racial profiling, mass incarceration, poverty, gender violence, and various other forms of racial inequality and injustice. Consequently, to align oneself with this mission is to be political, which can be perceived as being "too Black" or even militant. Black professionals are forced to consider this reality when making their

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105. MELAKU, *supra* note 1, at 46; MOORE, *supra* note 17; *see also supra* Part IV.B.2.a.

106. For discussion on the theory of presentation of self, which emphasizes impression management as a tool to shape how others perceive an individual, see ERVING GOFFMAN, THE PRESENTATION OF SELF IN EVERYDAY LIFE 208–36 (1959).

107. Devon W. Carbado & Mitu Gulati, *Working Identity*, 85 CORNELL L. REV. 1259, 1262 (2000).

108. *Id.*

109. Responses from Online Survey of Black Women Lawyers, *supra* note 57.

110. *See* GOFFMAN, *supra* note 106, at 208.

political views public, adding to the invisible emotional, cognitive, and relational labor associated with being Black in white spaces, thereby highlighting the impact of the inclusion tax.

Nonetheless, in the wake of protests against continued police violence experienced by Black people, organizations have released statements of support, affirming commitments to racial justice, which may or may not directly translate to supporting the BLM movement. While this moment calls for public acceptance of outward political views supporting efforts to move the discourse of racial equity further, the Black women respondents continue to be wary. Dorothy, a chief of staff, notes that although it has been "easier to communicate about things that are important to me (equity and racism for example) when centering or responding to issues highlighted by the election," she generally avoids discussing politics in the workplace "because I am in Executive Management and I do not truly know most of my colleagues."[111]

CONCLUSION

Although 2020 has certainly laid bare the systemic racist inequalities that have long impacted the life chances of Black communities in the United States—prompting organizations to publicly commit to racial and social justice—this has always been the reality of Black people. Whether in the streets or boardrooms, Black people continue to have to fight to be heard, seen, and respected. They have always demanded this basic right throughout American history, from slavery, emancipation, Reconstruction, Jim Crow, and the civil rights movement to the present-day BLM movement. As we all bear witness to another social movement aimed at addressing anti–Black racism and racial inequality endemic to American institutions,[112] organizations are called to action.

Drawing from a critical race framework and literature that centers the experiences of women of color and Black women in law firms, this Article suggests that the challenges that existed pre–COVID-19 for Black women lawyers are now exacerbated by the pandemic, racism, and political polarization. The concrete barriers that precluded Black women from accessing recruitment, professional development, and advancement opportunities remain solid. Utilizing an intersectional approach to analyze systemic racism in organizations, this Article examines the preliminary findings from an ongoing empirical study exploring the impact of COVID-19, racial upheaval, and political polarization on Black women lawyers in the workplace. By underscoring the invisible labor clause and inclusion tax concepts, this Article provides insight into the nuanced ways Black women lawyers are inherently disadvantaged within racialized social structures[113] that are embedded with hidden racist mechanisms, thereby reinforcing racial

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111. Responses from Online Survey of Black Women Lawyers, *supra* note 57.
112. *See generally* FEAGIN, *supra* note 15.
113. BONILLA-SILVA, RACISM WITHOUT RACISTS, *supra* note 13, at 8–9; Bonilla-Silva, *supra* note 50.

and gender inequities. Through the invisible labor Black women expend and the resulting inclusion tax they pay, this Article gives some early insights into the particulars of how their emotional, psychological, and social well-being is affected by this moment of unrest.

In summary, Black women face significant challenges navigating the remote workplace dynamics brought on by the COVID-19 pandemic and intensified by racial upheaval and political polarization. These dynamics further exacerbate the level of invisible labor expended trying to: (1) manage work and "home" expectations simultaneously; (2) cope with the emotional and psychological impact brought on by the stress of trying to manage everything; (3) deal with managing both the emotions and perceptions of others, in addition to their own; (4) contend with becoming visible for reliving traumas; (5) navigate politics and discourse surrounding racism; and (6) mitigate the burden of being tapped for DEI work. These preliminary findings lay the foundation for an in-depth, ongoing empirical investigation examining the intensified pressures and changing dynamics in the workplace that inevitably impact the career trajectories of Black women lawyers.

The recent National Association for Law Placement's 2019 Report on Diversity in U.S. Law Firms confirms that law firms continue to preserve and maintain white male privilege.[114] Law firms, as well as other white organizational spaces, are called on to take this opportunity to drive the change they publicly proclaim to commit to bringing. Three initial recommendations for addressing racial and gender inequities can be considered. First, organizations must ground themselves in the recognition, acknowledgement, and acceptance that the problem is deeply rooted within the racist patriarchal structures that operate to reproduce and preserve white male privilege and power.[115] Second, the leadership must take accountability for ensuring that the experiences of BIPOC employees are not only heard but also believed to mitigate the negative impact of implicit biases, stereotypes, and behaviors that aim to derail their access to opportunities. Third, organizations must bring to bear the fact that racial and gender inequality did not develop overnight. They must be prepared to do the arduous task of consistently, repeatedly, and intentionally making targeted changes to dismantle the system of white privilege and power that inherently disadvantages nonwhites. In so doing, organizations can begin to make racial and gender equity intrinsic to their core values and foundational structure rather than additive, thus shifting the efficacy of DEI efforts from optics to

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114. NAT'L ASS'N FOR L. PLACEMENT, *supra* note 21, at 3 ("Equity partners in multi-tier law firms continue to be disproportionately white men. In 2019, just 1 in 5 equity partners were women (20.3%) and only 7.6% were people of color."); *see also* JOE R. FEAGIN & KIMBERLEY DUCEY, ELITE WHITE MEN RULING: WHO, WHAT, WHEN, WHERE, AND HOW 76–78 (2017) (discussing the white male dominance in various parts of the legal profession).

115. BONILLA-SILVA, RACISM WITHOUT RACISTS, *supra* note 13, at 17–52; BONILLA-SILVA, WHITE SUPREMACY, *supra* note 13; FEAGIN, *supra* note 13, at 306 ("To understand the white racial frame, and to change it, one must understand that it is an integrated whole that is learned and reinforced in white social networks over lifetimes."); FEAGIN, *supra* note 15; MELAKU, *supra* note 1, at 116; MOORE, *supra* note 17.

action. Unless systemic racist practices are rooted out, Black women lawyers will continue to pay a steep inclusion tax negotiating their presence and potential opportunities for advancement and success in white spaces.